**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**

**CIVIL APPELLATE JURISDICTION**

**A.O. NO. 732 OF 2006**

**WITH**

**CIVIL APPLICATION NO. 985 OF 2006**

**AND**

**CIVIL APPLICATION NO. 986 OF 2006**

Kaluram Digamber Balwadkar
& Ors. .. Appellants.

vs.

Shakuntala Pandurang Tapkir
& Ors. . .. Respondents.

Mr. N.V. Walawalkar, Sr. Counsel
with Rajesh More for appellants.
Mr. P.K. Dhakephalkar, Sr. Counsel with
Mr. R. N. Sanghavi i/by M/s. Sanghavi
& Associates for Respondent No.1.

**CORAM : A.P. DESHPANDE, J.**

**DATE : 21st November, 2006.**

P.C.

. All the original plaintiffs who are six in number are the sons and daughters of original defendant no. 2, Digambar. The defendant no. 1 Shakuntalabai is the maternal aunt of the original

plaintiffs and by a registered sale deed dated 15.10.2004 the defendant no. 1 purchased the suit house which was standing in the name of defendant no. 2 Digambar and which property the plaintiffs claim to be ancestral. For almost two years after execution of the sale deed the plaintiffs did not take any steps in challenging the said document. On 8.8.2006, the plaintiffs instituted a suit for declaration that the sale deed is null and void as the same was executed without any consideration and that a fraud was played by defendant no. 1 in getting the said sale deed executed. In the suit for cancellation of the sale deed, the plaintiffs moved an application at Exhibit-5 seeking temporary injunction against the defendant no. 1 from dispossessing them from the suit house. The trial Court has rejected the application having regard to various documents placed on record which go to indicate parting of possession by the vendors in favour of the vendee. What is relevant to note is that the defendant no. 2, viz., the father of the plaintiffs in no uncertain terms has admitted receipt of the consideration being in the sum of Rs. 8 lacs. The trial Court has also observed that all the plaintiffs are literate and it is highly improbable that they would execute a sale deed without going through the contents thereof. Taking an overall view of the matter, the civil application claiming temporary injunction has been rejected. I

have perused the same. The order under challenge does not call for any interference. The finding that the defendant no. 1 is in possession of the property is based on the material on record.

2. At this stage, the learned counsel for the appellants submits that the plaintiffs have come in possession of various documents in the form of bank record which would indicate that the amount of consideration credited in his account has been siphoned out and misappropriated by the defendant no. 1 and her husband and an attempt is made to place these documents on record by filing civil application. I decline to see those documents as they were not placed on the file of the trial Court. As I have declined to interfere with the impugned order, I proceed to reject the appeal. Appeal is summarily dismissed. However, it is made clear that it shall be open for the appellants to move the trial Court for seeking appropriate orders in that regard.

**(A.P. Deshpande, J.)**